IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12636 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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KALUJI CHANDUJI THAKORE & 6 - Petitioner(s)
Versus
JAYKISHAN KHEDUT GANOTIYANI KHETI SAHAKARI MANDALI LTD. & 3 - Respondent(s)

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Appearance :
MR JC VYAS for Petitioner(s) : 1 - 7.
MR AJ PATEL WITH MS MEGHA JANI for Respondent No. 1
NOTICE SERVED for Respondent(s) : 2,
NOTICE UNSERVED for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 30/08/2006

ORAL JUDGMENT

1. **Rule.**

Mr.A.J.Patel, learned advocate with Ms.Megha

Jani, learned advocate for contesting respondent No.1 appears and waives service of notice of rule. Rest of the respondents are not contesting parties, therefore, they are not required to be served with notice of rule.

2. By filing instant petition, under Article 227 of the Constitution of India, the petitioners seek to challenge the order dated 24.04.2006 recorded below application – exhibit 276 and order dated 26.04.2006 recorded below application – exhibit 279 by the learned Senior Civil Judge, Ahmedabad (Rural) at Navrangpura, Ahmedabad by which the applications filed by the petitioners through their power of attorney holder Amarsinh B. Chavada for reopening the stage of their oral evidence has been rejected and the prayer to review the said order has also been rejected.

3. According to the petitioners, they had executed a legal registered sale deed in favour of respondent Nos. 3 an 4 for the suit land. It is alleged that the respondents got executed the sale deed in their favour from the power of attorney holder with an intention to grab the land in question and filed suit being Regular Civil Suit No. 401 of 1996. It is further averred that the power of attorney was never executed by the petitioners.

4. During the course of the proceeding, the evidence of the petitioners was closed, therefore,

the petitioners filed application – exhibit 276 to reopen the stage of their oral evidence. The said application came to be rejected *vide* order dated 24.04.2006. The petitioners, thereafter, filed another application – exhibit 279 to review the earlier order. The said application was also rejected *vide* order dated 26.04.2006, giving rise to the present petition.

5. Having heard Mr. J.C.Vyas, learned advocate of the petitioners and Mr.A.J.Patel, learned advocate with Ms.Megha Jani, learned advocate for contesting respondent No.1 and having perused the averments made in the application as well as the Regular Civil Suit No. 401 of 1996 filed by the respondents, copies whereof have been supplied during the course of the submissions, according to this Court, the learned trial Judge ought to have allowed the application-exhibit – 276 by permitting the petitioners to lead their oral evidence. Therefore, the impugned order does not stand to scrutiny of this Court, and therefore, deserves to be quashed and set aside by allowing this petition.

6. For the foregoing reasons, the petition succeeds and accordingly it is allowed with no order as to costs. The impugned orders dated 24.04.2006 and 26.04.2006 are hereby quashed and set aside, the result of which is that application – exhibit 276 and application – exhibit 279 are allowed and the petitioners are permitted to lead their oral

evidence.

7. It is expected of the petitioners to start leading their evidence within a period of two weeks hereof and shall complete their evidence within a period of eight weeks thereafter. The learned trial Judge shall decide the suit at the earliest and not later than 31st December, 2006.

Rule is made absolute.

Direct service is permitted.

[A.M.KAPADIA, J.]

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